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DIRECTOR OFFICE
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ROLF JANSEN
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HOUSTON TX 77273

In re Application of :
Rolf Jansen :
Application No. 09/232,566 :
Filed: January 15, 1999 :
For: **TRACTOR/TRAILER BACK UP KIT** :

DECISION ON PETITION

This is a decision on the Petition to Make Special filed August 30, 2001 under MPEP §708.02 (IV), applicant's age and also a decision on the Petition to the Director pursuant to 37 CFR § 1.181, filed October 12, 2001.

A petition to make special under MPEP §708.02, IV, must show that petitioner is 65 years of age, or more. Acceptable evidence includes a birth certificate, copy of a driver's license, or simply a statement by the applicant. No fee is required.

The petition includes a declaration executed by Rolf Jansen in support of the petition, evidencing that he is over 65 years of age.

Accordingly, the petition to make special is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

Regarding applicant's petition to the Director, the petition is to "...complain of unfair conduct of the examiner, with respect to the format of the appellant's brief". Specifically, petitioner requests that the "Commissioner of Patents and Trademarks overrule and rescind the examiner's order of September 20, 2001 holding the Brief non-compliant.

A review of the application reveals that the U.S. Patent and Trademark Office (Office) mailed a final Office action on January 29, 2001. Applicant filed a request for two month extension of time on April 24, 2001 and then filed on June 28, 2001, via certificate of mailing, a Notice of Appeal. On August 30, 2001 applicant timely filed the brief in question as well as the petition to make special as addressed above. On September 20, 2001, the Office mailed out a Notice of Non-Compliance for failure to comply with numerous sections of 37 CFR §1.192(c). On October 12, 2001, applicant filed the subject petition and a request for a one month extension of time (paying for three months) to respond to the Notice of Non-Compliance. On December 12, 2001 (11/20/01 with certificate of mailing) applicant filed for another one month extension of time to respond to the Notice of Non-Compliance. This should have been a request for two month extension with first month previously paid. Instead, applicant paid for four months extension of time. On January 16, 2002 (12/19/01 with certificate of mailing) applicant filed a request for a third one month extension of time to respond to the outstanding Notice of Non-Compliance. This should have been a request for three month extension of time with the first two months having been previously paid for. Instead, applicant paid for five months extension of time. On January 31, 2002 the Office mailed a new non-final Office action, essentially reopening prosecution. Unfortunately, a statement to that effect is not noted in the new Office

communication. On February 22, 2002 (1/19/02 certificate of mailing) applicant filed a petition pursuant to 37 CFR §1.182 requesting grant of extension of time until the 37 CFR §1.181 petition is decided, stating that "...applicant has mailed all the payments to the PTO for extensions of time to respond to the examiner's action of 9/20/01, that are allowable". On June 3, 2002 (5/30/02 certificate of mailing), applicant filed a one month extension of time, a request for reinstatement of the appeal and a supplemental appeal brief. On August 16, 2002, the examiner prepared and mailed an answer to appellant's brief.

MPEP §1206 Appeal Brief, states in part:

APPEAL BRIEF CONTENT...

An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant pro se, i.e., there is no attorney or agent of record, and the brief was neither prepared nor signed by a registered attorney or agent. The brief of a pro se appellant which does not contain all of the items, (1) to (9), specified in 37 CFR 1.192(c) will be accepted as long as it substantially complies with the requirements of items (1), (2), and (8). If the brief of a pro se appellant is accepted, it will be presumed that all the claims of a rejected group of claims stand or fall together unless an argument is included in the brief that presents reasons as to why the appellant considers one or more of the claims in the rejected group to be separately patentable from the other claims in the group. [emphasis added]

37 CFR §1.192 Appellant's brief, states in part:...

(c) The brief shall contain the following items under appropriate headings and in the order indicated below unless the brief is filed by an applicant who is not represented by a registered practitioner:

(1) Real party in interest. A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest.

(2) Related appeals and interferences. A statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal...

(8) Argument. The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

(i) For each rejection under 35 U.S.C. 112, first paragraph, the argument shall specify the errors in the rejection and how the first paragraph of 35 U.S.C. 112 is complied with, including, as appropriate, how the specification and drawings, if any,

(A) Describe the subject matter defined by each of the rejected claims,

(B) Enable any person skilled in the art to make and use the subject matter defined by each of the rejected claims, and

(C) Set forth the best mode contemplated by the inventor of carrying out his or her invention.

(ii) For each rejection under 35 U.S.C. 112, second paragraph, the argument shall specify the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(iii) For each rejection under 35 U.S.C. 102, the argument shall specify the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

(iv) For each rejection under 35 U.S.C. 103, the argument shall specify the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied on in the rejection, and shall explain how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument shall explain why the references, taken as a whole, do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not properly be combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of this paragraph.

(v) For any rejection other than those re-ferred to in paragraphs (c)(8)(i) to (iv) of this section, the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

The appellant's brief of August 30, 2001 substantially meets the requirement of 37 CFR §1.192(c)(1,2 and 8) as defined by MPEP 1206 concerning Pro Se appellants. Specifically, the appellant states that they are a pro-se appellant, that appellant was not represented by a registered practitioner and that this was the first appeal brief they had ever written (taken as satisfying the requirement of 37 CFR §1.192 (c)(2)), and the brief contained presentation of arguments to each of the issues presented in the Office action.

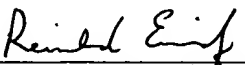
Consequently, the Notice of Non-Compliance mailed September 20, 2001, requiring the pro-se appellant to comply with all of the requirements of 37 CFR §1.192(c), was improper.

Therefore, appellant's brief should have been considered by the Office. Given that prosecution was re-opened in view of a new grounds of rejection on January 31, 2002, the Office's Non-Compliant Notice is vacated.

Accordingly, petitioner's request that the "examiner's order of September 20, 2001" be rescinded, is **Dismissed as Moot**.

It is noted that the pro-se appellant's supplemental appeal brief has been considered as having met the requirements of 37 CFR §1.192 and has been treated in the Examiner's Answer mailed August 26, 2002.

The application will be forwarded to the Office of Patent Legal Administration (OPLA) to address applicant's 37 CFR 1.182 petition regarding fees paid and request for extensions of time. From there, the application will be forwarded to the Board of Patent Appeals and Interferences for decision of the appeal.


Mark Powell, Director FOR
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Communications